

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RHODE ISLAND Department of Administration

Division of Purchasing

NOTICE OF PUBLIC HEARING

The Director of the Rhode Island Department of Administration has under consideration proposed amendments to STATE PROCUREMENT REGULATIONS. These proposed amendments have been prepared a result of comments received at a public hearing held on December 16, 2008 and further review by the Department. These proposals amend the State Procurement Regulations adopted in January of 1995 currently on file with the Office of the Secretary of State as ERLID Number 539. The proposed amended regulations are promulgated in accordance with Section 37-2-39 and Chapter 42-35 of the General Laws of Rhode Island, as amended, and shall establish criteria by which public agencies would be authorized to select methods of construction contract management services.

Notice is hereby given in accordance with the provisions of Chapter 42-35 of the Rhode Island General Laws, as amended, that a public hearing on the above proposed amended rules and regulations shall be held on Tuesday January 20, 2009 at 10:00 a.m. in Conference Room C in the William E. Powers Building (Department of Administration Building), One Capitol Hill, Providence, Rhode Island, at which time and place all persons interested will be heard.

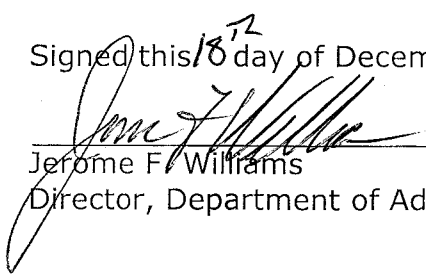
In the development of the proposed amended rules and regulations, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business, as defined in Chapter 42-35 of the Rhode Island General Laws, as amended, which may result from these regulations. No alternative approach or duplication or overlap was identified based upon available information.

Copies of the proposed regulations are available for public inspection at the offices of Division of Purchases, Department of Administration, One Capitol Hill, Providence, RI 02908, or by calling Lorraine Hynes at 401-574-8100, or by sending an email to: LHynes@purchasing.state.ri.us. In conformance with Section 42-35-3(a)(1) of the General Laws of Rhode Island, copies of a concise summary of all non-technical amendments being proposed are available upon request.

For the sake of accuracy, it is requested that statements made relative to any aspect of the regulations, including alternative approaches, overlap, or significant economic impact, be submitted in writing at the time of the hearing, emailed or mailed prior to the hearing date to: Lorraine Hynes, Division of Purchases, Department of Administration, One Capitol Hill, Providence, RI 02908. Oral statements made at the public hearing will be considered, but should be limited to five minutes each.

Conference Room C is accessible to individuals with disabilities. Individuals requesting interpreter services for the hearing impaired must call James Pitassi at 222-6395 at least forty-eight (48) hours in advance of the hearing date.

Signed this ^{18th} day of December, 2008


Jerome F. Williams

Director, Department of Administration

**STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS
Department of Administration, Division of Purchasing
Responsibility for Selection of Methods of Construction
Contracting Management**

**Proposed Amendment to Procurement Regulation 8.11
*December 18, 2008***

**Summary of All Non-technical Differences Between Existing and
Proposed Rules Pursuant to RIGL § 42-35-3(a)(5)***

The proposed rules set forth five (5) alternative methods of contract management and describe the criteria for each method in detail, while the existing rules simply gave discretion to the purchasing agent or agency to choose the method of contract management for a particular project without actually listing various methods of contract management. (See Existing Rule 8.11) Definitions of the various methods are included. In addition, the criteria for selecting several of these methods have been expanded. Specified road, bridge and heavy construction projects are exempted from the provisions of this rule.

The existing rule states that the use of any method other than general contractor must be justified in writing to the Purchasing Agent by the requesting agency, stating the reasons why the preferred method may not be used, and the Purchasing Agent may approve or reject such requests at his discretion. (See Existing Rule 8.11.2) The proposed rules, however, list nine (9) separate criteria which must be reviewed in making the determination of which method of contract management will be utilized for a particular project.

Although the existing rules presently require the Chief Purchasing Officer to record the reasons for the choice of contract management in writing and maintain such document in the contract file, the proposed rules further extend this requirement to the purchasing agent or agency. (See Existing Rules 8.11, 8.11.2) A section has also been added to address possible protests.

* Because of the complicated travel of this amendment, and in order to clarify, the above comparisons are between the proposed amendments and the original provisions of the State Procurement Regulations filed in 1995 as ERLID 539.

**STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS
Department of Administration, Division of Purchasing
Responsibility for Selection of Methods of Construction
Contracting Management**

**Proposed Amendment to Procurement Regulation 8.11
*December 18, 2008 (Changes since December 16 Hearing are in
italics and bolded)***

~~8.11 CONSTRUCTION CONTRACTING MANAGEMENT. [37-2-39] Responsibility for selection of methods of construction contracting management. The Chief Purchasing Officer shall issue regulations providing for as many alternative methods of management of construction contracting as he may determine to be feasible, setting forth criteria to be used in determining which method of management of construction is to be used for a particular project, and granting to the Purchasing Agent, or the purchasing agency responsible for carrying out the construction project, the discretion to select the appropriate method of construction contracting for a particular project, provided, however, that the Chief Purchasing Officer shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of management of construction contracting in each instance.~~

~~8.11.1 The Chief Purchasing Officer may delegate to the Purchasing Agent authority to select the appropriate contract type for construction and public works projects. The Purchasing Agent shall carry out all responsibilities of the Chief Purchasing Officer in recording such determinations.~~

~~8.11.2 The generally preferred method of construction contracting management for all projects shall be a general contractor selected as the lowest responsive bidder based on a lump-sum, fixed fee contract type, and projects utilizing this method shall not require individual written determination of such preference. The use of any other method must be justified in writing to the Purchasing Agent by the requesting agency, stating the reasons why the preferred method may not be used, and the Purchasing Agent may approve or reject such requests at his discretion.~~

8.11 Selection of Methods of Construction Contracting Management

8.11.1 Construction Contract Management. The intent of Rule 8.11 is to specifically identify alternative methods of management of construction and the criteria to

be used in selecting such methods. In addition, the intent of this Rule is to clarify that the method of source selection used to award a state contract for a particular construction project shall continue to be governed by all the applicable provisions of chapter 2 of title 37, entitled "State Purchases", also referred to as the "State Purchases Act". These provisions include but are not limited to sections 37-2-17 "Methods of source selection"; 37-2-18 "Competitive sealed bidding"; 37-2-19 "Competitive negotiation"; 37-2-20 "Negotiations after unsuccessful competitive sealed bidding"; 37-2-21 "Noncompetitive procurements"; 37-2-22 "Small purchases" and 37-2-59 "Professional services – Architectural, engineering, and consultant services – Committee". Provided, however, the provisions of Rules 8.11.3 and 8.11.4 shall not apply to road, bridge and heavy construction projects which are funded in whole or in part by federal funds.

8.11.2 Road, Bridge and Heavy Construction Projects. The provisions of Rules 8.11.3 and 8.11.4 shall not apply to road, bridge and heavy construction projects that are managed by the Rhode Island Department of Transportation and are funded in whole or in part by federal funds. Road, bridge and heavy construction projects are subject to the methods of management of construction contracting, including the criteria for selecting such methods, that are set forth in applicable federal law, including but not limited to 23 U.S.C. 112(b)(i) as amended, and regulations promulgated thereunder.

8.11.3 Construction Contract Management Methods and Criteria. For all other construction projects not included in Rule 8.11.2, the methods below, along with the criteria for each method, are the alternative methods of construction contract management deemed feasible by the Chief Purchasing Officer. The methods below are not mutually exclusive and may be combined on a project.

8.11.3.1 General Contractor Method. The general contractor method is typified by one business, acting as a general contractor, contracting with the State to timely complete an entire construction project in accordance with drawings and specifications provided by the State. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the State. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the general contractor has entered into subcontracts.

The general contractor method is the generally preferred method of construction work and may be selected for a project when it is determined that the following criteria will be met:

(a) the project requires timely completion of the construction

work in accordance with drawings and/or specifications provided by the State and/or the State's agent.

(b) the project work may be performed by specialty sub-contractors under the control and supervision of a general contractor.

(c) the project does not require direct supervision or coordination between the contractor and project engineering/design professionals other than as normally performed by State employees.

(d) the construction project is estimated to cost in excess of ten thousand dollars (\$10,000).

(e) sufficient time exists to complete the design, bid the project and construct the work by the desired occupancy date.

8.11.3.2

Multiple Prime Contractors. Under the multiple prime contractor method, the State or its agent contracts directly with any number of contractors, often representing different trades, to complete portions of the project in accordance with the State's drawings and specifications. The State and/or its agent ~~may~~ **shall** have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility.

The multiple prime contractor method may be selected for a project when it is determined that the following criteria will be met:

(a) the State or its agent is able to coordinate job site activities of any number of contractors and/or subcontractors with varying areas of construction expertise to complete portions of the project in accordance with the State's drawings and specifications, and the State or its agent will contract directly with such contractors and/or subcontractors.

(b) the State and/or its agent is able to assume primary responsibility for successful completion of the entire project ~~or is able to delegate such responsibility to one of the multiple prime contractors.~~

(c) the construction project is for the rehabilitation or renovation of a building or buildings.

- (d) the contract(s) for the rehabilitation or renovation of any building(s) in the aggregate are estimated to cost less than two million dollars (\$2,000,000).

8.11.3.3 Design-Build. In a design-build project, a person or firm contracts directly with the State to meet the State's requirements as described in a set of design or engineering specifications, bridging documents, or scope of work. Final design and construction are both the responsibility of the design-build contractor. This method can include projects where the design-build contractor supplies the site as part of the design-build package.

The design-build method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State does not have the ability to prepare the requisite design or engineering specifications, bridging documents, or scope of work.
- (b) the State cannot manage or supervise the work of specialty trade contractors and ~~will not contract directly with such specialty trade contractors~~ *it is not in the State's best interest to contract directly with such specialty contractors.*
- (c) the State determines that it is in its best interest for a design-build firm to assume responsibility for both final design and construction of the project.
- (d) due to time constraints and the need to complete the project on an expedited basis, it is in the State's best interest to select a design-build contractor rather than a general contractor for the project.
- (e) construction work on the project has an estimated cost equal to or greater than two-million five-hundred thousand dollars (\$2,500,000).
- (f) the State desires to have a single firm responsible for both design and construction.

8.11.3.4 Construction Manager at Risk. A Construction Manager at Risk is a person or firm experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to

coordinate the construction of the project, including the administration of change orders. Without limitation, the construction manager at risk ~~may~~ shall guarantee that the project will be completed on time and will not exceed a specified maximum price, and/or may obtain subcontractors through the issuance of multiple competitively negotiated bid packages as the design is developed. The construction manager at risk may provide for any and all services as deemed necessary by the state which may include, but not be limited to, construction services, management services, accounting services, design services and, the employment of specialty subcontractors to the construction manager at risk as deemed necessary to successfully complete the project.

The Construction Manager at Risk method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State lacks the resources to evaluate and implement drawings and specifications as they affect time, cost, and quality of construction and lacks the ability to coordinate the construction of the project, including the administration of change orders.
- (b) the State requires professional assistance in the development of a cost effective design (also known as the construction document phase) for the project.
- (c) it is in the State's best interest to hire a construction manager who can guarantee that the project will be completed on time and will not exceed a specified guaranteed maximum price for construction for the scope of the work, as defined by the drawings, specifications, and other pertinent information known at the time the guaranteed maximum price was set.
- (d) it is in the State's best interest not to retain the services of a general contractor for the project and not to directly hold contracts with subcontractors, but rather to retain the services of a construction manager, who shall be required to directly retain subcontractors through issuance of multiple, competitively negotiated bid packages.
- (e) it is in the State's best interest to pay a single management fee which may be either a lump sum or a combination of other fees, except that said fees shall not be calculated as a

percentage of construction costs, with a guaranteed maximum cost for construction.

- (f) it is in the State's best interest to hire a construction manager who can provide construction services, management services, accounting services, and retain specialty subcontractors as deemed necessary to successfully complete the project.
- (g) the project has an estimated cost equal to or greater than twenty-five million dollars (\$25,000,000).

8.11.3.5 Owner Program Management. Owner Program Management is a method of procurement in which the program manager acts as the owner's agent in all aspects of the construction project including architectural programming, planning, design and as well as construction. The owner's program manager provides services ranging from early feasibility studies to post-construction facilities management. The program manager typically provides services that include: a) the establishment and management of cost and time parameters, b) value engineering input and cost analysis, c) preparation of bid packages, d) establishment and maintenance of quality control standards, e) project reporting and, f) project accounting services. Other specific services may be contracted to the owner's program manager.

The Owner Program Management method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State does not have the ability to prepare the requisite design or engineering specifications, bridging documents, or scope of work;
- (b) the State cannot manage or supervise the work of specialty trade contractors and will not contract directly with such specialty trade contractors;
- (c) it is in the State's best interest to retain a program manager to supervise and or monitor the activities of a general contractor; and/or
- (d) it is in the State's best interest to retain a program manager to supervise and or monitor the engineering and architectural services for a project;

(e) the construction project has an estimated cost equal to or greater than ten thousand dollars (\$10,000).

8.11.4 Construction Contract Management Selection Information. In addition to criteria set-forth in Rule 8.11.3, the following information for a particular project shall be submitted to the Chief Purchasing Officer under Rule 8.11.5:

8.11.4.1 when the project must be completed or ready for occupancy or use;

8.11.4.2 the specific nature of the project and its specialized needs, e.g. housing, offices, laboratories, and specialized construction;

8.11.4.3 the extent to which the requirements of the procuring agency and the ways in which said requirements are to be met are known;

8.11.4.4 the location of the project;

8.11.4.5 the size, scope, complexity, and economics of the project;

8.11.4.6 the amount and type of financing available for the project, including whether the budget is fixed and the source of funding, e.g., general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds;

8.11.4.7 the availability, qualification, and experience of State personnel to be assigned to the project and how much time the State personnel can devote to the project;

8.11.4.8 the availability, experience and qualifications of outside consultants and contractors to complete the project under the various methods being considered;

8.11.4.9 the method of source selection under the State Purchases Act that will be used to award a contract to a vendor for this particular project.

8.11.5 ~~Selection~~ Documentation of Selection Determination. Using and including the information in Rule 8.11.4, the purchasing agent or purchasing agency responsible for carrying out the construction project shall set forth in writing to the Chief Purchasing Officer the facts that led to the selection of a particular method of construction contract management pursuant to the criteria set forth in Rule 8.11.2 or 8.11.3 and the information required in Rule 8.11.4. The Chief Purchasing Officer shall include in the contract file a written statement setting forth the facts that led to the selection of a particular method of management of construction in each instance. The Chief Purchasing

Officer's written statement may adopt, in whole or in part, any written statements provided by the purchasing agent or the purchasing agency.

- 8.11.6 Protest. Any actual or prospective bidder, offeror, or contractor, who is aggrieved in connection with the solicitation or selection for award of a contract, may file a protest with the Chief Purchasing Officer pursuant to RIGL section 37-2-52.